



U.S. Department
of Transportation

**Federal Highway
Administration**

West Virginia Division

Geary Plaza, Suite 200
700 Washington Street, East
Charleston, West Virginia 25301
(304) 347-5928

June 9, 2003

IN REPLY REFER TO:

Federal Project APD-0484(059)
State Project X142-H-38.99 C-2
Appalachian Corridor H
Various Counties
Memorandum of Understanding

Randolph T. Epperly, Jr., P.E.
Deputy State Highway Engineer -
Project Development
West Virginia Division of Highways
Charleston, WV 25305

Dear Mr. Epperly:

Enclosed please find a copy of the fully executed Memorandum of Understanding among the Federal Highway Administration, Monongahela National Forest and West Virginia Department of Transportation. If there are any questions concerning this matter, please contact me at (304) 347-5268 or via e-mail at Henry.Compton@fhwa.dot.gov.

Sincerely yours,

Sgt. Henry E. Compton

Henry E. Compton, P.E.
Right of Way & Environment Specialist

Enclosure

MEMORANDUM OF UNDERSTANDING

Between

the Federal Highway Administration,

**the West Virginia Department of Transportation,
Division of Highways,**

and

**the United States Department of Agriculture, Forest Service,
Monongahela National Forest**

The MEMORANDUM OF UNDERSTANDING (MOU) is hereby entered into by and between the Federal Highway Administration, hereinafter referred to as the FHWA; the West Virginia Department of Transportation, Division of Highways, hereinafter referred to as the WVDOH; and the United States Department of Agriculture, Forest Service, Eastern Region, Monongahela National Forest, hereinafter referred to as the MNF.

A. PURPOSE:

The purpose of this MOU is to document measures that have been or will be employed to facilitate continued coordination among the WVDOH, FHWA and the MNF during the development and implementation of the Appalachian Corridor H highway project. This MOU will outline project specific measures to minimize and mitigate the effects of Appalachian Corridor H to the MNF and to outline review processes for activities that cannot be defined until final design activities have been undertaken (e.g., excess excavation sites, trail relocations, trailhead parking areas, etc.). In addition, the MOU will document actions that have been or will be taken by the respective parties for the redevelopment of the existing abandoned railway corridor located within the Blackwater Canyon area into a bicycle/pedestrian path.

B. BACKGROUND:

The WVDOH, FHWA and the MNF have worked cooperatively since the inception of the Appalachian Corridor H highway project to minimize impacts to forest resources. The MNF has been and continues to be a Cooperating Agency in the environmental process and a Consulting Party in application of Section 106 of the National Historic Preservation Act.

In August 1996, FHWA issued a Record of Decision (ROD) approving the alignment for Appalachian Corridor H between Elkins and the West Virginia/Virginia state line. The 1996 Corridor H ROD approved the Preferred Alternative identified in the 1996 Corridor H FEIS. In late 1996, legal challenges to the 1996 Corridor H ROD were presented in U.S. District Court in Washington, D.C. On October 8, 1997, the U.S. District Court ruled in favor of the FHWA and WVDOH. The plaintiffs subsequently filed an appeal with the U.S. Court of Appeals. As a result of the findings made during the appellate review, the case was referred to mediation in early 1999. As a result of the mediation, a Settlement

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Agreement (February 2000) was reached among the parties. The Settlement Agreement divided the 100-mile long Corridor H corridor into nine separate projects. The Settlement Agreement required that the two projects affecting the Monongahela National Forest (Kerens to Parsons and Parsons to Davis) have Supplemental Environmental Impact Statements prepared. The SEIS's for each of these sections are currently under development with anticipated completion in calendar year 2003. The MNF has been and continues to participate in the review of all aspects of the environmental development process.

The West Virginia State Historic Preservation Officer (SHPO) has concurred that both the Kerens to Parsons project and the Parsons to Davis project would have "no adverse effect" on historic and archeological resources. This finding concludes the Section 106 consultation process under the Section 106 programmatic agreement for Corridor H. The FHWA and WVDOH have agreed to continue coordinating with the SHPO during final design and construction of these projects.

While Corridor H will not have an adverse effect on historic and archeological resources within the MNF, the highway will increase access to the Forest and has the potential to cause impacts within the Forest, depending on the routes that are selected in the environmental process for the Kerens to Parsons and Parsons to Davis projects. Accordingly, the WVDOH, FHWA and MNF have agreed to enter into this MOU in order to promote the protection and public understanding of the historic and archeological resources located within the MNF, while also establishing procedures to assure that any impacts of construction within the MNF are appropriately addressed.

C. AGREEMENTS

1. Historic and Archeological Resources.

The WVDOH will provide the MNF a total of \$1,200,000.00 beginning on July 1, 2003. The funding will be distributed over a five year period as follows:

July 1, 2003:	30% of the funds distributed (\$360,000)
July 1, 2004:	20% of the funds distributed (\$240,000)
July 1, 2005:	20% of the funds distributed (\$240,000)
July 1, 2006:	20% of the funds distributed (\$240,000)
July 1, 2007:	10% of the funds distributed (\$120,000)

The funding is to be used exclusively for personnel and equipment costs to investigate, evaluate, interpret and curate archaeological and historic resources under the stewardship of the MNF, production costs associated with disseminating the results of archaeological and historical fieldwork, and the design, installation, and production of interpretive signing, displays, and other devices for public dissemination. A portion of the interpretive signing/displays is to be placed within the boundaries of the National Register Eligible Blackwater Industrial Complex along the proposed bicycle/pedestrian path. Acknowledgement will be made to the financial contribution of the WVDOH and the FHWA in all public documents and displays.

2. Bicycle/Pedestrian Trail on Railroad Grade in Blackwater Canyon

Upon successful completion of the environmental process for the Parsons to Davis project, the WVDOH will construct a bicycle/pedestrian trail on the existing railroad grade through the Blackwater Canyon area. Trail design will accommodate any outstanding rights and reservations existing along the trail to be determined by the WVDOH. In addition, access to private properties located along the trail will be accommodated in trail design and construction to the extent that MNF lands are required for that access.

After completion of the Blackwater Canyon bicycle/pedestrian path by the WVDOH, the MNF will agree to assume overall maintenance responsibilities for the facility. An agreement to this effect shall be executed between the WVDOH and MNF upon final acceptance of the project.

3. Boundary Survey of Railway Corridor from Parsons to Thomas

In addition to the funding noted in item #1, the WVDOH will provide the MNF a total of \$229,000 to conduct, with its contractors, a boundary survey with monumentation of the existing abandoned railway corridor from Parsons to Thomas. The funding will be disbursed upon approval of this MOU.

4. Agreements to Transfer Funds.

The WVDOH will prepare two additional implementing agreements to transfer the funds committed in numbered paragraphs 1 and 3 of this MOU. The WVDOH and the MNF shall execute these agreements.

5. Limitations on Use of Funds

The MNF will use the funding providing by the WVDOH for only the activities authorized in this MOU. Funds will be used employing a CWFS (Cooperative Work Forest Service) job code. The 5-year financial plan included as Attachment A to this agreement will be followed as closely as possible.

6. Annual Accounting of Expenditures by MNF

The MNF will provide a detailed accounting of all expenditures at the end of each State of West Virginia Fiscal Year. No additional funds shall be provided until the report has been submitted to the WVDOH for review. The report should also include a summary of the findings made during any archaeological investigations conducted using the provided resources. At the end of year 5, a complete summary report shall be submitted to the WVDOH outlining the utilization of the available funding, a summary of any projects that were completed and an overall report on archaeological findings.

7. Use of Federal Funds

The Federal Highway Administration concurs that federal funds (including Appalachian Development Highway System funds) may be used for all activities defined in this Interagency Agreement.

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8. Construction Impacts within MNF

The following terms and conditions shall apply if the environmental process results in the selection of an alternative located within the MNF for any portion of Corridor H:

- a. The WVDOH will work with the MNF to establish any excess excavation and/or borrow sites or construction access roads within the Forest to minimize environmental impacts. The WVDOH/MNF will agree during the project development process to areas within the MNF that may be suitable locations for development of these ancillary facilities. The final construction plans will depict these agreed upon areas.
- b. In addition to any stipulations outlined in the Letter of Consent (the document that allows access to the MNF for construction of the highway), all preliminary construction plans for projects located within or near the forest boundaries will be submitted to MNF for review. The WVDOH will provide the MNF a minimum of 14-calendar day notice to all field and/or office reviews. The MNF will make every effort to provide representation at the reviews.
- c. The WVDOH will work with the MNF to establish appropriate replacement and/or relocation sites for any trails crossed and/or relocated by Corridor H. Additionally, the WVDOH will establish parking areas and trailheads as mutually agreed upon by the MNF.
- d. The MNF will provide comments on all plan submissions and related information no later than 30 days from receipt of information.
- e. The WVDOH will use natural stream design for all high quality stream relocations within the boundaries of the Forest.
- f. The WVDOH will use Best Management Practices for all erosion control within the Forest. The MNF staff will be invited to attend all erosion control reviews, comment on erosion control plans and participate in field views of the construction projects as needed.

9. Effective Date

This MOU will become effective upon signature by all parties and shall remain in effect until terminated by any party.

10. Termination and Amendments

Any signatory may terminate this MOU upon 90 days written notice to the other. Its provisions can be amended or supplemented in writing. Unless terminated, this MOU will remain in full force and effect until completion of the Kerens to Parsons and Parsons to Davis projects.

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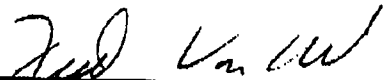
SIGNED:



Thomas J. Smith, Division Administrator
Federal Highway Administration

6/9/03

Date



Fred VanKirk, Secretary
West Virginia Department of Transportation

4/9/03

Date



Clyde N. Thompson, Forest Supervisor
Monongahela National Forest

3/27/03

Date

ATTACHMENT A

Annual Budget	Year 1 360,000	Year 2 240,000	Year 3 240,000	Year 4 240,000	Year 5 120,000	Total 1,200,000
Contracts and Agreements/annum						
Participating Agreement	50,000	50,000	50,000	50,000	50,000	250,000
Signage Contract	75,000					75,000
Total	125,000	50,000	50,000	50,000	50,000	325,000
Wages/annum						
Term Salaries	80,068	95,094	103,905	108,061		387,128
Forest Archaeologist salary	25,000	38,000	38,000	38,000	45,000	184,000
Seasonal Wages	34,671	35,712	36,783	37,886		145,052
Total	139,739	168,806	178,688	183,947	45,000	716,180
Equipment/Supplies						
Vehicle	26,000					26,000
Office Supplies	2,000	1,000	1,000	1,000	1,000	6,000
Vehicle Costs	6,000	6,000	6,000	6,000	5,000	29,000
Cameras	2,000					2,000
Computers	8,500					8,500
Travel/Training	9,500	4,500	4,500	4,500	4,500	27,500
Radiocarbon Dates	5,000	5,000	5,000	5,000		20,000
Library	9,500					9,500
Office Equipment	5,800				14,520	20,320
Initial Field Equipment	10,000					10,000
Total	84,300	16,500	16,500	16,500		158,820
Yearly Totals	349,039	235,306	245,188	250,447	120,020	1,200,000
Projected Carryover	10,961	15,655	10,467	20		